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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID EUGENE LOONEY,

Defendant and Appellant.

C065377

(Super. Ct. No. 08F04203)

About 1:45 a.m. on May 24, 2008, Sacramento Police Officer Brian McGlinchey saw defendant David Eugene Looney backing a car out of the parking lot of a clothing store at a high rate of speed. Clothing was sticking out of the car door. The glass front door was shattered and the alarm was sounding. With lights and siren activated on the patrol car, McGlinchey followed defendant, who drove to his house about a quarter of a mile away. Inside the car, McGlinchey and another officer found nine First Communion dresses, 20 boys' tuxedos, a crowbar and gloves. Defendant, as well as the owner of the house, consented

to a search of defendant's room, where the officers found ammunition and hundreds of used syringes.

Defendant entered a guilty plea to second degree burglary (Pen. Code, § 459) and admitted a strike prior (1993 robbery) in exchange for a stipulated state prison sentence of six years, that is, the upper term of three years doubled for the strike prior. The court sentenced defendant accordingly.

Defendant appeals. The trial court denied defendant's request for a certificate of probable cause. (Pen. Code, § 1237.5.)

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

The trial court awarded 731 actual days and 364 conduct days for a total of 1,095 days of presentence custody credit but the abstract of judgment does not so reflect.<sup>1</sup> Defense appellate

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<sup>1</sup> We deem defendant to have raised the issue whether amendments to Penal Code section 4019, effective January 25, 2010, which increased the rate at which prisoners earn presentence conduct credits, apply retroactively to his pending appeal and entitle him to additional conduct credits. (Misc. order No. 2010-002.) We conclude that the amendments apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740,

counsel wrote to the trial court, notifying it that the abstract failed to reflect the presentence custody credit awarded and requesting that the trial court correct the abstract and forward a copy to this court. This court has not received a corrected abstract. In addition, the box in section 4 of the abstract, which should reflect that defendant was sentenced as a two-strike offender, was not checked. We will order the abstract corrected. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The trial court is directed to prepare a corrected abstract of judgment to reflect that defendant was awarded 731 actual days and 364 conduct days for a total of 1,095 days of presentence custody credit and to check the box in section 4 to reflect that defendant was sentenced as a two-strike offender and to forward a certified copy of the corrected abstract to the

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745 [statutory amendments lessening punishment for crimes apply "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying the rule of *Estrada* to an amendment involving credits]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [same].) However, the recent amendments to Penal Code section 4019 do not operate to modify defendant's entitlement to additional presentence custody credit, as he has a prior conviction for robbery, a violent felony. (Pen. Code, §§ 667.5, subd. (c)(9), 4019, former subds. (b)(2) & (c)(2) [as amended by Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 50], 2933, subd. (e)(3) [as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010].)

Department of Corrections and Rehabilitation. The judgment is affirmed.

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MURRAY, J.

We concur:

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RAYE, P. J.

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BUTZ, J.